



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 5, 2009

CBCA 1449-RELO

In the Matter of JOYCE A. AUGUSTYN

Joyce A. Augustyn, Aberdeen Proving Ground, MD, Claimant.

Eric J. Feustel, Office of the Staff Judge Advocate, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

STEEL, Board Judge.

Claimant, Joyce A. Augustyn, seeks reimbursement from the Department of the Army (Army) for real estate transaction expenses of \$16,821 arising from the April 2004 sale of her house in El Paso, Texas. This sale followed a permanent change of duty station (PCS) move from Fort Bliss, Texas, to Shape, Belgium. Real estate expenses were not authorized for this move, and therefore we sustain the decision of the Army since it correctly applied the statute and the implementing Joint Travel Regulations (JTR).

Background

In anticipation of claimant's PCS move, on February 13, 2004, the Benelux Civilian Personnel Advisory Center (CPAC) authorized travel between duty stations, transportation, per diem, storage and shipment of household goods, and other miscellaneous expenses. It did not authorize real estate expense reimbursement for the Texas/Belgium move. Nonetheless, claimant states that she had no expectation of returning to Fort Bliss, Texas, and therefore, subsequent to receipt of the February 2004 travel authorization, she sold her house in El Paso, incurring expenses in the amount of \$16,821.

Ms. Augustyn spent four years and one and one half months outside the Continental United States (OCONUS). After eighteen months in Belgium, she made another PCS in August 2005 to work with the U.S. Army Corps of Engineers in Wiesbaden, Germany. The June 15, 2005, authorization for this PCS likewise authorized travel, transportation, per diem,

storage and shipment of household goods, and other miscellaneous expenses, but again, no reimbursement of real estate expenses.

Claimant remained in Wiesbaden until April 2008, when she was reassigned back to the Continental United States (CONUS), to the Aberdeen Proving Ground in Maryland. Her April 4, 2008, travel authorization allowed for travel between stations, per diem, and storage and shipment of household goods. In addition, for this PCS, she was authorized to incur temporary quarters subsistence expenses and real estate expenses. In reliance on her PCS to Maryland, on June 5, 2008, Ms. Augustyn sought reimbursement of her real estate expenses for the 2004 sale of her El Paso, Texas, house. On her reimbursement request form, she stated that her “notification date of transfer” was January 1, 2004, for “transfer from Fort Bliss, Texas to Aberdeen Proving Ground.”

By letter in support of her claim, Ms. Augustyn asserted that she knew in 2004 that she would not be returning from OCONUS to Fort Bliss, Texas, because base realignment and closure discussions in 2004 indicated that her Fort Bliss unit would be moved in the future to Fort Sill, Oklahoma, and “it was understood throughout the installation that those who left in that timeframe would not return.” She also suggested that, in any event, she and her family would not have returned to El Paso for personal reasons. By letter of December 4, 2008, Ms. Augustyn states that the fact that real estate reimbursement was part of the Aberdeen PCS hiring package was a factor in her selection of the position.

Discussion

Statute and the JTR state that an employee being transferred to an OCONUS duty station who is officially notified that return is to be to a different CONUS permanent duty station (PDS) may sell the residence at the former CONUS PDS following receipt of the official notification. However, that reimbursement is not allowed for any real estate transaction that occurs prior to official notification. A travel authorization transferring the employee from a foreign PDS to a PDS within the United States other than the one from which the employee was transferred to the foreign PDS ordinarily constitutes official notification. 5 U.S.C. § 5724a(d)(2), (3) (2000); JTR C5750-D.5, E.2(a), (b).

As explained in the reconsideration decision in *Dominicangelo D’Angella*, GSBCA 16704-RELO, 06-1 BCA ¶ 33,171 (2005), for “an overseas employee transferring back to a duty station in the continental United States, the [real estate expense reimbursement] benefit is only triggered by official notification the claimant would be transferring to a permanent duty station different from the one claimant had left.” *See also Donald W. Owens*, GSBCA 16533-RELO, 05-1 BCA ¶ 32,875. Here, claimant was not officially notified of her transfer to a different duty station from the one she had left until more than four years after

the sale of her residence at her old duty station in Texas, when she received orders to the Aberdeen Proving Ground.

While acknowledging that she did not have official notification that she would be assigned to a different PCS upon return to the United States, Ms. Augustyn stated by letter of April 30, 2009, that she was “told that I should have maintained the Fort Bliss house until I returned CONUS. I believe that is an absurd expectation that places an unrealistic logistical and financial burden on those who serve overseas.” Unfortunately, while that may be the effect of the statute and underlying regulations, the Army, and this Board, must apply the law as it exists. The law requires that for reimbursement of real estate expenses, the reimbursement in question must be authorized by the Government, and the expenses to be reimbursed must be incurred after official notification that the employee is being returned to a PCS different from that from which the employee was transferred when assigned to the post of duty outside the United States. 5 U.S.C. § 5724a(d)(3).

The Army was correct in denying reimbursement of the claimed expenses.

Decision

The claim is denied.

CANDIDA S. STEEL
Board Judge